

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID LOREN WALDECK,

Defendant.

CR 22-59-M-DWM

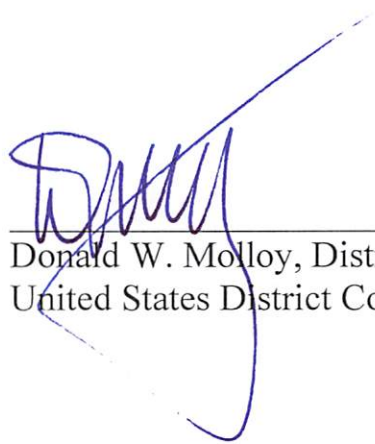
ORDER

On March 12, 2024, Defendant David Loren Waldeck filed a pro se letter requesting the return of his vehicle. (Doc. 112.) That request was construed as a motion for return of property under Rule 41(g) of the Federal Rules of Criminal Procedure, and the government was ordered to respond. (Doc. 113.) In its response, the government indicates that the vehicle was seized and searched by Flathead Tribal Police before it was released to Draggin Wagon Towing, LLC for return to its owner. (*See* Docs. 114, 114-1.) The vehicle was not seized as evidence or forfeited by the government. Accordingly, the federal government never possessed the vehicle. *See Bailey v. United States*, 508 F.3d 736, 739 (5th Cir. 2007) (explaining that a finding of whether the government actually possesses or did possess the property at issue is “a necessary predicate” to resolving a Rule 41(g) motion). “[T]he government cannot return property it does not possess, and

the doctrine of sovereign immunity bars the award of monetary damages under Rule 41(g).” *Id.* at 740.

Accordingly, IT IS ORDERED that Waldeck’s motion (Doc. 112) is DENIED.

DATED this 8th day of April, 2024.



Donald W. Molloy, District Judge
United States District Court